REMARKS

By this amendment, applicants have amended the claim 17 to recite that the glass consists essentially of the recited materials. Applicants have also added claim 28 reciting that the glass is substantially free of a transition metal oxide. These amendments are supported by Applicants' specification, including, e.g., Table 1 on pages 15 and 16, especially Examples 1-14, 17-20 and 23-25. Claims 2, 7-11, 15, 16 and 19 have been amended to depend from claim 28.

In response to the obviousness-type double patenting rejections in numbered sections 4 and 5 of the outstanding Office Action, Applicants are submitting herewith a properly executed, timely filed Terminal Disclaimer in accordance with 37 CFR 1.321(c). In view of the filing of a Terminal Disclaimer, reconsideration and withdrawal of the double patenting rejections in numbered sections 4 and 5 of the Office Action are requested.

The Terminal Disclaimer has been filed in order to advance the prosecution o the subject application and is not an admission of the propriety of the double patenting rejections.

Claims 1-7 and 9-27 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,801,397, over claims 1-13 of U.S. Patent No. 6,577,472, claims 1-11 of U.S. Patent Application No. 10/916,439 (Publication No. 2005/0013048 A1, and claim 1 of U.S. Patent Application No. 11/268,566 (corresponding to Publication No. 2006/0034015A1. Applicants traverse these rejections and request reconsideration thereof.

Initially, it is noted that the subject application has an effective of U.S. filing date earlier than the effective U.S. filing date of the cited patents and applications.

Since the cited patents and applications are the later filed applications, the question of whether a timewise extension of the right to exclude granted by a patent is justified or unjustified must be addressed. Manual of Patent Examining Procedure (MPEP) 804 II.B.1.(b). Since the Examiner has not conducted this analysis, it is not clear whether a one-way or two-way obviousness determination is appropriate. Accordingly, the double patenting rejections must be withdrawn until this question is addressed.

If a two-way obviousness determination is appropriate, it is noted that the cited patents and patent applications claim glass substrates requiring the presence of a transition metal oxide, which is not requiring by the claims of the subject application.

Moreover, even if a one-way obviousness determination is appropriate, it is noted that claim 17 recites that the glass consists essentially of the recited materials and claim 28 recites that the glass is substantially free of a transitional metal oxide. Accordingly, claims 17 and 28 and the claims depending thereon are not encompassed by the invention set forth in the claims of the cited patents and patent applications. Accordingly, with respect to claims 2-28, the obviousness-type double patenting rejections must be withdrawn for this additional reason.

Claims 2-6 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of any one of U.S. Patent Application No. 11/268,566, U.S. Patent Application 10/916,439, U.S. U.S. Patent No. 6,577,472 or U.S. Patent No. 6,801,397 as applied to claims 1 to 7 and 9 to 27, taken in view of Nakagawa et al. U.S. Patent No. 5,093,173. Applicants traverse these rejections and request reconsideration thereof.

For the reasons noted above, the cited patent applications and patents do not claim the same patentable invention as set forth in claims 2-6 of the subject application.

The patent to Nakagawa et al. discloses a magnetic disc comprising a substrate of an amorphous glass continuous phase dispersed with crystal particles which produce a structurally defined surface on the substrate. However, nothing in Nakagawa et al. remedies any of the deficiencies noted above with respect to the cited patent applications and patents. Accordingly, the double patenting rejection of claims 2-6 should be withdrawn.

Claim 8 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of any one of U.S. Patent Application No. 11/268,566, U.S. Patent Application 10/916,439, U.S. U.S. Patent No. 6,577,472 or U.S. Patent No. 6,801,397 as applied to claims 1 to 7 and 9 to 27, taken in view of Kitaura et al. U.S. Patent No. 5,681,632. Applicants traverse this rejection and request reconsideration thereof.

Claim 8 is not unpatentable over the claims of the cited patent applications and patents for the reasons noted above.

The Kitaura et al. patent discloses an optical information recording medium with dielectric layers having specific thermal expansion coefficients. However, nothing in Kitaura et al. would have remedied any of the deficiencies noted above with respect to the cited patent applications and patents.

In view of the foregoing amendments and remarks, favorable reconsideration and allowance of all of the claims now in the application are requested.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing

of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 503.35524CC3), and please credit any excess fees to such deposit account.

Respectfully submitted,

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